

Assembly Bill No. 44

Passed the Assembly August 30, 2010

Chief Clerk of the Assembly

Passed the Senate August 26, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 5898.15, 5898.23, and 5899.2 to the Streets and Highways Code, relating to public improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, Blakeslee. Improvement Act of 1911: contractual assessments.

Existing law, the Improvement Act of 1911, authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property, as specified. Existing law requires the legislative body to make these determinations by adopting a resolution indicating its intention to do so and requires that the resolution include specified information and directs an appropriate public agency official to prepare a prescribed report.

This bill would define the term “permanently fixed,” for purposes of financing the installation of distributed generation renewable energy sources, to include systems that are attached to specified types of real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the agreement satisfies prescribed criteria.

This bill would prohibit a public agency from permitting a property owner to participate in a contractual assessment program if the total amount of the assessments and taxes on the property exceeds 5% of the property’s market value, as specified. This bill would also require the prescribed report to include criteria for determining the underwriting requirements, as well as safeguards to be used to limit the total annual property tax and assessments on the property.

The people of the State of California do enact as follows:

SECTION 1. Section 5898.15 is added to the Streets and Highways Code, to read:

5898.15. (a) A public agency shall not permit a property owner to participate in any program established pursuant to this chapter if the owner's participation would result in the total amount of any annual property taxes and assessments exceeding 5 percent of the property's market value, as determined at the time of approval of the owner's contractual assessment.

(b) Nothing in this chapter shall be construed to void or otherwise release a property owner from the contractual obligations incurred by a contractual assessment on a property, particularly in the event that the total amount of annual property taxes and assessments exceeds 5 percent of a property's market value after the property owner has entered into a contractual assessment pursuant to this chapter.

SEC. 2. Section 5898.23 is added to the Streets and Highways Code, to read:

5898.23. For purposes of the report required pursuant to Section 5898.22, the statement of public agency policies required pursuant to subdivision (c) of that section shall also include a brief description of criteria for determining the underwriting requirements, as well as safeguards that will be used to ensure that the total annual property tax and assessments on the property will not exceed 5 percent of the property's market value, as determined at the time of approval for the owner's contractual assessment.

SEC. 3. Section 5899.2 is added to the Streets and Highways Code, to read:

5899.2. For the purpose of financing the installation of distributed generation renewable energy sources pursuant to this chapter, "permanently fixed" includes, but is not limited to, systems attached to a residential, commercial, industrial, agricultural, or other real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the power purchase agreement or lease contains all of the following provisions:

(a) The attached system is an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program

(Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(b) The term of the power purchase agreement or lease is at least as long as the term of the related assessment contract.

(c) The owner of the attached system agrees to install, maintain, and monitor the system for the entire term of the power purchase agreement or lease.

(d) The owner of the attached system is not permitted to remove the system prior to completion of the term of the contractual assessment lien.

(e) After installation, the power purchase agreement or lease is paid in full using the funds from the contractual assessment program.

(f) The right to receive the electricity from the system, through a power purchase agreement or lease or the right to the system itself, is tied to the ownership of the assessed real property and is required to be automatically transferred with the title to the real property whether the title is transferred by voluntary sale, judicial or nonjudicial foreclosure, or by any other means.

(g) The power purchase agreement or lease identifies the public agency that is a party to the assessment contract on the real property as a third-party beneficiary of the power purchase agreement or lease until the assessment lien on the property has been fully paid and, only until that time, prohibits amendments to the power purchase agreement or lease without the consent of the public agency.

(h) Each of the following provisions, in order to ensure that the property owner is guaranteed the electric power from the system for the length of the lien:

(1) The system cannot be removed if the owner of the attached system is not performing its obligations under the contract.

(2) The owner of the attached system must be a bankruptcy remote special purpose entity that is bankruptcy remote and meets all of the following conditions:

(A) It does not engage in any business other than owning the attached systems and entering into electricity contracts with the homeowner.

(B) It has no material debt.

(C) Its contracts are either entered into with unrelated third parties or have terms negotiated at arms length.

Approved _____, 2010

Governor